LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
http://www.in.gov/legislative

FISCAL IMPACT STATEMENT

LS 7582 | **NOTE PREPARED:** Feb 24, 2003
BILL NUMBER: SB 386 | **BILL AMENDED:** Feb 20, 2003

SUBJECT: Venture Capital Investment Tax Credit.

FIRST AUTHOR: Sen. Kenley | **BILL STATUS:** As Passed - Senate
FIRST SPONSOR: Rep. Hasler

FUNDS AFFECTED: X GENERAL | **IMPACT:** State
X DEDICATED
FEDERAL

Summary of Legislation: (Amended) The bill specifies that a pass through entity is eligible for the Venture Capital Investment Tax Credit for investments made in qualified Indiana businesses. The bill eliminates certain requirements that a business must meet in order to be certified as a qualified Indiana business. The bill sets forth procedures for the Department of Commerce to certify that a taxpayer is entitled to a venture capital investment tax credit. The bill also provides that if a taxpayer carries over any credit amount to the succeeding year, the amount carried over does not count toward the $10,000,000 in maximum allowable credits for the succeeding year. It also provides that notwithstanding P.L. 192-2002(ss), the Venture Capital Investment Tax Credit applies to taxable years beginning after December 31, 2002.

Effective Date: January 1, 2003 (retroactive).

Explanation of State Expenditures: (Revised) The Indiana Department of Commerce (IDOC) would incur additional administrative expenses relating to certification of qualified venture capital investment plans and monitoring credit awards relative to the annual credit maximum. These expenses presumably could be absorbed given the IDOC's existing budget and resources. The February 7, 2002 state staffing table indicates that the IDOC has 43 vacant full-time positions, including regional office positions.

Explanation of State Revenues: (Revised) The bill makes the following changes to the Venture Capital Investment Tax Credit that could potentially have a fiscal impact.

(1) The bill moves back the starting date after which qualified venture capital investments may be made from December 31, 2003 to December 31, 2002. Thus, the credit would be effective beginning in tax year 2003. This would move the initial $10 M maximum revenue impact back from FY 2005 to FY 2004. This would

also increase the maximum total impact over the life of this credit from $50 M to $60 M. (Note: For purposes of awarding new tax credits, this law sunsets after the 2008 tax year.)

(2) The bill also changes the calculation of the annual aggregate credit limit of $10 M. This change could increase the annual total credits claimed above the existing statutory limit of $10 M per year in tax years 2004 to 2008. This could potentially reduce revenue by an amount greater than $10 M in FY 2005 to FY 2009. This would be contingent on the amount of carryover credits and new credits that taxpayers are able to claim in a tax year.

(3) The bill also could potentially expand the pool of taxpayers that qualify for the tax credit. The revenue impact of this change is indeterminable.

Background: Under the Venture Capital Investment Tax Credit, a taxpayer is entitled to a nonrefundable tax credit equal to the lesser of: (1) 20% of qualified investment capital (debt or equity capital) provided to a *qualified Indiana business* during a calendar year; or (2) $500,000. The tax credit is allowed for venture capital investment made from January 1, 2004 to December 31, 2008. In addition, current law limits to $10 M the total tax credits that may be claimed in calendar year. Under current law, a taxpayer may claim the credit against the State Gross Retail and Use Tax, Adjusted Gross Income (AGI) Tax, Financial Institutions Tax, or Insurance Premiums Tax liability. While the tax credit is nonrefundable, it may be carried forward to subsequent years. No carryback of the tax credit is allowed. If a pass through entity does not have a tax liability, the credit may be taken by shareholders, partners, or members in proportion to their distributive income from the pass through entity. Under current law, the Indiana Department of Commerce (IDOC) must certify whether a business is a *qualified* Indiana business for purposes of obtaining venture capital investment that qualifies for the tax credit. The IDOC must certify a business as qualified if it meets the following criteria:

> (1) it is a high growth company that is entering a new product or process area, has a substantial number of college educated or high skill employees, and has substantial number of employees earning at least 150% of Indiana per capita personal income;
>
> (2) it has its headquarters in Indiana;
>
> (3) it is primarily focused on research and development, technology transfers, or the application of new technology, or has significant potential of bringing substantial capital into Indiana, creating jobs, or diversifying the business base in Indiana;
>
> (4) it has had average annual revenue less than $10 M in the two preceding years;
>
> (5) at least 50% of its employees reside in Indiana and at least 75% of its assets are located in Indiana; and
>
> (6) it is not engaged in one of six specified businesses.

Under the bill, the credit is effective beginning in tax year 2003 rather than tax year 2004. The bill also provides that the $10 M annual limit on total credits allowed applies only to the new credits certified for venture capital provided during that taxable year. Thus, carryover credits claimed in a taxable year are not counted toward the $10 M annual maximum. This means that the combined total of new credits certified and carryover credits claimed against tax liabilities could exceed $10 M beginning in tax year 2004.

The bill also makes changes to the criteria for certifying a business as a qualified Indiana business for venture capital investment that may be claimed by the investor under the Venture Capital Investment Tax Credit. These changes could potentially increase the number of businesses in which creditable venture capital investment may be made. Under the bill, the certification criteria described in (1) above is eliminated. Also, under the bill, a business would no longer have to meet both the employee and asset requirements described in (5) above. The business would only have to meet one of these requirements.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Department of State Revenue, Indiana Department of Commerce.

Local Agencies Affected:

Information Sources:

Fiscal Analyst: Jim Landers, 317-232-9869